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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ RC.REV. 290/2025, CM APPL. 60268/2025-Stay, CM APPL.
60269/2025-Exp

MR ISHRAT JAMIL

.....Petitioner

Through: Mr. Amit Kumar and Ms. Vandana,
Advocates

versus

SH RAJESH GUPTA & ANR.

.....Respondents

Through: Mr. Ramesh Kumar, Advocate for
R-1

CORAM:

HON'BLE MR. JUSTICE SAURABH BANERJEE

ORDER

22.09.2025

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1. By virtue of the present petition, the petitioner seeks to impugn the order dated 18.03.2025 passed by the learned ARC-01, District Central, Tis Hazari Courts, Delhi in Eviction Petition No.3/2024 titled '**Rajesh Gupta v. Khaleeq**' filed under *Section 14(1)(e)* of the Delhi Rent Control Act, 1958 (**DRC Act**), whereby the eviction petition of the respondent no.1 against respondent no.2 has been allowed, and the petitioner's application under *Order I Rule 10* of the Civil Procedure Code, 1908 (**CPC**) has been dismissed.

2. Learned counsel for the petitioner submits that the petitioner and his brother Late Mr. Habib Khan (father of respondent no.2), had jointly taken the tenanted premises from one Mr. Shyam Sundar Gupta (father of respondent no.1) in the year 1980. He further submits that around 1996-



97, the father of respondent no.2 shifted to another premises, whereafter the tenanted premises was solely in the occupation of petitioner.

3. He further submits that as the petitioner has been residing in the tenanted premises since 1980 and has also been paying rent to the respondent no.1, he is the actual tenant thereof, and thus a necessary and proper party to the eviction proceeding filed before the learned ARC. By drawing the attention of this Court to the eviction petition, he submits that in paragraph no.14 of the eviction petition, the respondent no.1 has himself pleaded as under:

“Very old construction. The tenancy was created in favour of Late Habib Khan, father of Khaleeq with whom rent agreement was executed. After death of Habib Khan, uncle of respondent Zameel Khan is occupying the tenanted remises as tenant.”

4. In view thereof, learned counsel for the petitioner submits that the petitioner was a necessary and proper party who ought to have been impleaded in the proceedings before the learned ARC.

5. Issue notice.

6. Learned counsel for the respondent no.1 accepts notice. He submits that it is an admitted case of the petitioner himself that the rent was always paid in the name of late Mr. Habib Khan, father of the respondent no.2, as also that the petitioner is not a tenant but is illegally occupying the subject premises. The petitioner is, in fact, an unauthorized occupant having no landlord tenant relationship. He submits that there was no reason for the learned ARC to believe the case set up by the petitioner since he was admittedly a minor aged around 10-12 years at the time of the inception thereof.



7. He further submits that even though the respondent no.2 has been evicted by virtue of the impugned order, there is no challenge thereto by him, despite the expiry of the statutory period of *six months* provided under *Section 14(7)* of the DRC Act. In any event, as per him the present petition is *per se* not maintainable as the remedy available with the petitioner lies under *Section 25* of the DRC Act which has not been availed by the petitioner.

8. Lastly, he submits that the petitioner could at best be regarded as a joint tenant in respect of the tenanted premises and since the eviction proceedings against the joint tenant(s) are maintainable, there is no infirmity in the impugned order dismissing the petitioner's application under *Order I Rule 10 CPC*.

9. In rejoinder thereto, learned counsel for the petitioner submits that the learned ARC has committed an error in hastily dismissing the petitioner's application under *Order I Rule 10 CPC*, without calling for a reply as also without affording the petitioner herein an opportunity to file his application seeking leave to defend. To buttress the aforesaid submissions, learned counsel for the petitioner has relied upon the judgment titled ***Kewalkant v. V.K. Gupta*** [ILR 1972 Delhi 357], wherein it has been held as under:

“(11) I am, therefore, of the view that a subtenant or other person who is in actual possession of the property and is really sought to be dispossessed by the landlord by the action is a proper party, who is vitally interested in the result of the eviction proceedings and his presence is necessary for complete and effectual adjudication of real dispute between the parties. Hence he must, if he applies for the purpose during the



pendency of proceedings, be imp leaded as a party, in accordance with Order I, Rule 10 of the Code of Civil procedure. The revision, as a result succeeds and the impugned order is set aside. The application of the petitioner herein is allowed and he is directed to be imp leaded as a respondent No. 2 in the eviction proceedings. The parties are directed to appear before the Controller today. There will be no order as to costs.”

10. This Court is not convinced with the arguments advanced by the learned counsel for the petitioner since, it is the admitted case of petitioner that he was always paying rent to respondent no.1 for/ on behalf of Late Habib Khan (father of the respondent no.2). Moreover, the petitioner, being a mere occupant of the tenanted premises, has no right to continue in possession, particularly, since he is neither the tenant nor the Legal Representative of the original tenant to whom the premises was actually let out before.

11. It is also difficult to accept the contention of the petitioner that he and the father of respondent no.2 had jointly taken the tenanted premises on rent in view of the fact that at that time, the petitioner was a minor aged around 10-12 years. Even if the case of the petitioner is taken to be true, *admittedly*, the petitioner could at best be regarded as a joint tenant alongwith the respondent no.2. It is trite law that an eviction proceeding like the present one filed by the respondent no.1 against one of the joint tenants is very much maintainable. Reference in this connection can be made to the decision of this Court in **Kishan Kumar and Another v. Mohd. Yunus** [2025 SCC OnLine Del 4593] and **Ramesh Mishra v. Usha Rani Verma and Others** [2019 SCC OnLine Del 7035].

12. Lastly, with regards to the reliance upon the judgment **Kewalkant**



(*supra*) by the learned counsel for the petitioner, the same is inapplicable to the facts and circumstances of the present case, since, *inter alia*, the ground for seeking eviction in that case was sub tenancy of the tenanted premises to the petitioner therein.

13. In view of the foregoing, this Court finds no infirmity in the impugned order dated 18.03.2025, whereby the petitioner's application under *Order I Rule 10* was dismissed and consequently an eviction order in the favour of respondent no.1 has been passed qua him. The petitioner could not have been a party to the *lis inter se* the respondent no.1/ landlord and the respondent no.2/ tenant.

14. In view of the aforesaid, the present petition alongwith the pending applications are dismissed.

SAURABH BANERJEE, J

SEPTEMBER 22, 2025/So